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No. 05-755

IN THE SUPREME COURT OF THE UNITED STATES

JILL BROWN, Warden, *Petitioner,*

v.

SANTOS L. REYES, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

In *Lockyer v. Andrade*, 538 U.S. 63, 72-73, 75-76 (2003), this Court held that a gross disproportionality principle under the Eighth Amendment applies to a sentence for a term of years, but that the principle reserves a constitutional violation for only the exceedingly rare and extreme case. This Court further held that it has not established a clear path for courts to follow in determining whether a particular sentence for a term of years violates the Eighth Amendment.

Under 28 U.S.C. § 2254(d)(2), a federal habeas court may not issue a writ unless the relevant state-court adjudication resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings. In *Williams v. Taylor*, 529 U.S. 420, 430, 432, 435 (2000), this Court held that 28 U.S.C. § 2254(e)(2) precludes a federal habeas court from holding an evidentiary hearing on a claim if the petitioner failed to develop the factual basis of the claim in State court proceedings.

In this case, Reyes had two prior strikes, including one for armed robbery. The trial court denied Reyes's motion to dismiss his strikes. The motion did not raise any issues concerning the circumstances of Reyes's prior convictions; it was limited to a claim that the triggering offense was so trivial that a 25-years-to-life sentence would be disproportionate. The court sentenced Reyes under California's Three Strikes law to prison for a term of 25 years to life. Reyes appealed the judgment and ultimately filed a petition for review in the California Supreme Court raising an Eighth Amendment claim. His appeal did not raise any issues concerning the circumstances of the prior convictions; instead, it reiterated the claim that the sentence was disproportionate in light of the minor nature of the triggering offense. The state court of appeal and the California Supreme Court rejected the claim. Reyes filed a petition for writ of habeas corpus in federal court raising an Eighth

Amendment claim. The District Court denied the petition. The Ninth Circuit issued a published opinion remanding the case to the district court for further development of the record as to the circumstances underlying the armed robbery conviction.

1. In light of *Lockyer v. Andrade*, 538 U.S. 63 (2003), can federal habeas corpus relief on cruel-and-unusual-punishment grounds be granted on a sentence that properly comports with California's Three Strikes law?

2. Does it violate the limitations of 28 U.S.C. § 2254(e)(2) to permit a habeas litigant to develop facts underlying his prior convictions as part of an Eighth Amendment challenge, when he never attempted to develop those facts as part of such a challenge in the State court?

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**IN THE SUPREME COURT OF THE UNITED STATES**

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## STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the Ninth Circuit was filed on March 4, 2005. The opinion is reported at 399 F.3d 964 (9th Cir. 2005).A copy of the slip opinion is attached to this petition, as Appendix A. On October 12, 2005, a divided panel denied Petitioner's petition for rehearing en banc. No judge of the court requested an en banc rehearing. The judgment and order of the district court, and the magistrate judge's report and recommendation, are unreported; a copy of each is attached to this Petition as Appendices F, G, and H. The California Court of Appeal's unpublished opinion is attached to this Petition as Appendix J. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## CONSTITUTION, STATUTES, OR REGULATIONS

United States Constitution, VIII Amendment.

Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (AEDPA)28 U.S.C. § 2254 et seq.

## STATEMENT OF THE CASE

In September 1997, under penalty of perjury, Reyes signed an application for a driver's license using another person's name. Appendix J at 59. Reyes's criminal record consisted of: (1) a 1981 juvenile adjudication for burglary, resulting in a commitment to the California Youth Authority for 2 years; (2) a 1984 misdemeanor conviction for being under the influence of drugs, resulting in probation with 90 days jail time; (3) a 1986 armed robbery conviction, resulting in a prison sentence of 9 years; (4) a 1994 conviction for petty-theft with a prior theft-related conviction, resulting in a prison sentence of 16 months; (5) a 1995 driving-under-the-influence conviction, resulting in probation; and (6) a 1997 conviction for battery, resulting in 30 days jail time. Appendix C at 20-21; Appendix J at 68-69.

The San Bernardino County District Attorney charged Reyes with one count of perjury (Penal Code § 118), alleged two prior strikes, i.e., the 1981 juvenile adjudication and the 1987 armed-robbery conviction, and alleged the 1994 conviction as a prison-prior. A jury convicted Reyes on the substantive count and found the allegations true. Appendix J at 58-60.

Prior to trial, Reyes filed a "Romero"[1/] motion asking the court to dismiss the priors. Appendix D. At sentencing, the

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1. In *People v. Superior Court (Romero)*, 13 Cal. 4th 497, 529-30, 53 Cal. Rptr. 2d 789 (1996), the California Supreme Court held sentencing courts have the power, pursuant to California Penal Code § 1385, to dismiss strikes in the interests of justice.

court deemed a portion of defense counsel's argument as a renewed "Romero" motion. Appendix I at 48-50, 55. After reviewing Reyes's criminal history, the court denied the motion. Appendix I at 55-56. The court said Reyes was a thief, a liar, and a drug and alcohol abuser. Appendix I at 55. The court said it was convinced that the world was not safe with Reyes on the street, that he needed to be kept off the streets for as long as possible, and that Reyes was exactly the sort of person the California Legislature had in mind when it enacted the Three Strikes law. Appendix I at 55-56. The court sentenced Reyes to 25 years to life on the substantive count, and added a year for the prison prior. Appendix I at 56.

In an unpublished opinion filed June 9, 1999, the California Court of Appeal rejected Reyes's claim that his sentence violated the Eighth Amendments's proscription against cruel and unusual punishment. Citing *Harmelin v. Michigan*, 501 U.S. 957 (1991), the court said the Eighth Amendment prohibits sentences grossly disproportionate to the crime. Citing *Rummel v. Estelle*, 445 U.S. 263 (1980), the court said state statutes imposing enhanced sentences for recidivist behavior have long been upheld. Thus, the court held, in light of Reyes's past and present offenses, he had not shown his punishment was grossly disproportionate to his recidivist behavior. Appendix J at 71.

Reyes filed a petition for review in the California Supreme Court, claiming, inter alia, his sentence was cruel and unusual punishment in light of the minor nature of the triggering offense. Appendix K. On September 1, 1999, the California Supreme Court denied the petition, with three Justices voting to grant. Appendix B.

On July 26, 2000, Reyes filed a petition for writ of habeas corpus in the United States District Court, claiming, inter alia, that in light of the minor nature of the triggering offenses, his sentence constituted cruel and unusual punishment. Appendix H at 39. On September 21, 2000, the magistrate judge filed a Report and Recommendation (R & R), recommending the claim